

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 GLORIA J. BLACKMAN,

11 Plaintiff,

12 vs.

13 MICHAEL J. ASTRUE, Commissioner of
14 Social Security,

15 Defendant.

Case No. 09-5026-RJB-KLS

ORDER ADOPTING REPORT
AND RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge
17 Karen L. Strombom. Dkt. 24. The Court has considered the Report and Recommendation, objections and
18 responses, and the record herein.

19 The plaintiff seeks reversal of the denial of her application for social security disability insurance
20 benefits. The Report recommends reversing the conclusion of the administrative law judge (ALJ) that the
21 plaintiff was not disabled; the report further recommends remanding the matter to the Commissioner for
22 further proceedings. *Id.* at 21. Specifically, the Report concludes that the ALJ erred in evaluating lay
23 witness evidence when he determined that statements from the plaintiff's family members did not concern
24 the relevant time period. *Id.* at 17-18. Therefore, the Report concludes, the validity of the ALJ's
25 assessment of the plaintiff's residual functional capacity, as well as the remaining Step Four findings, is
26 unclear from the record and should be remanded for further investigation. *Id.* at 19.

27 The defendant objects to the Report's recommendation, arguing that the Magistrate Judge applied
28 the incorrect standard of review in analyzing the ALJ's assessment of lay witness evidence. Dkt. 25.

1 According to the defendant, the ALJ's findings must be upheld when those findings are supported by
2 inferences reasonably drawn from the record. *Id.* The plaintiff responds that an ALJ must provide
3 germane and specific reasons on the record for discounting evidence from lay witnesses. Dkt. 28. The
4 defendant filed a reply, countering the plaintiff's response and restating the argument contained within the
5 objections. Dkt. 29.

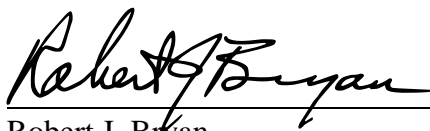
6 The Report and Recommendation thoroughly discusses the facts and law at issue here, and it
7 should be adopted. As the Report states, the ALJ is responsible for creating the record on which his or
8 her determination is made. The Magistrate Judge found, and the court agrees, that the ALJ failed to
9 adequately investigate the lay witness evidence to determine whether it covered the relevant time period
10 or not. The defendant argues that the court may not substitute its judgment for that of the ALJ, so long as
11 the ALJ's conclusion is reasonable in light of the record. However, the Report does not recommend that
12 the court substitute its judgment for that of the ALJ; rather, the Report recommends remanding this matter
13 to the Commissioner for further proceedings. That result seems appropriate here, where the record can be
14 more fully developed to ensure that the proper determination is made.

15
16 The Court hereby **FINDS** and **ORDERS**:

- 17 1. The court adopts the Report and Recommendation (Dkt. 24); and
18 2. The matter is remanded to the Commissioner of Social Security for further proceedings in
19 accordance with the findings within the Report.

20 The Clerk is directed to send copies of this Order to plaintiff, all attorneys of record, and to the
21 Hon. Karen L. Strombom.

22 DATED this 7th day of December, 2009.

23
24 
25 Robert J. Bryan
26 United States District Judge
27
28